COMMITTEE ON RULES OF PROCEDURE
IN DOMESTIC RELATIONS CASES
Draft Minutes
Tuesday, October 14, 2003 (10:00 am – 4:00 pm)
Judicial Education Center
541 E. Van Buren, Suite B4
Teleconference #: (602) 542-9001
Web Site: http://www.supreme.state.az.us/drrc/

Members Present:
Hon. Mark Armstrong, Chair
Annette T. Burns, Esq.
Hon. Norm Davis
Annette Everlove, Esq.
Deborah Fine, Esq. (telephonic)
Bridget Humphrey, Esq.
Hon. Michael Jeanes
Phil Knox, Esq.
Richard Scholz, Esq.
Debra Tanner, Esq.
Hon. Nanette Warner

Quorum: **Yes**

Members Not Present:
Janet Metcalf, Esq.
Hon. Dale Nielson
Robert Schwartz, Esq.
Brian W. Yee, Ph.D.

Staff Present:
Konnie K. Young
Karen Kretschman
Isabel Gillett

Guest:
Pat Gerrich, Esq.

1. Call to Order: Hon. Mark Armstrong

Judge Armstrong welcomed committee members, and all present members introduced themselves. Judge Armstrong directed the Committee to look at the new materials provided including the following:

- Revised Membership List
- Revised Workgroup List
- Draft Minutes from September 26, 2003

2. Limited Scope Representation Presentation: Pat Gerrich, Esq.

Judge Armstrong introduced Pat Gerrich, from the Volunteer Lawyers Program, who presented information on limited scope representation. Judge Armstrong directed members to look at one of the handouts, provided for the Committee by Bridget Humphrey, entitled "Attorney of Record: Withdrawal and Substitution of Counsel," which Bridget drafted for discussion at today's meeting. Judge Armstrong asked Committee members if they believe it would be favorable to have a rule that includes limited scope representation, and most members present indicated (by raised hand) that they would be in favor of including such a rule.

Pat Gerrich referred to her handout entitled, "Improving Access to Justice through Limited Scope Representation." As director of the Volunteer Lawyers Program for nine and a half years, Pat said they find it difficult to get attorneys to take on a *pro bono* basis when their cases require an extensive amount of time. Pat believes that more attorneys would volunteer to take on cases if they were allowed to use limited scope representation that would fit into their calendars. In her view, limited representation could be a tool to provide more help to more people through *pro bono* or volunteer lawyer programs; if lawyers had confidence that they could represent clients on a limited scope basis, more people would be able to retain attorneys.

Pat recommends that withdrawal should be even more expedient. She feels that a lawyer should be able to inform the court by attaching a copy of the limited scope representation agreement that shows the representation has been completed; then the attorney should be allowed to withdraw. If there is a 40-50 day time period where no one knew who was in charge of the case, it could cause some problems. Not all states have that waiting period.

Judge Warner asked a question regarding the time it takes for a judge to rule on a withdrawal: a month and a half in Maricopa County for a judge to sign a withdrawal. Judge Warner voiced her concern about relying on attorneys to withdraw on their own, without judicial approval. Judge Warner does not think that this will work in her county—allowing attorneys to withdraw whenever they feel like it. Pat said that ideally, an attorney would have a signed agreement by the client.
Annette Burns had a related question, and she prefaced it by saying that a lot of things go on at the same time in a family law case. Annette asked if the rules could be drawn so specifically that other processes (e.g. conciliation, expedited services, etc.) could still go on during the time period. Pat responded by saying that an attorney might not be required to handle all issues, but is responsible to make sure the client is aware of other issues, particularly if the attorney is noticed. Lawyers still have an ethical responsibility to be competent. If something else comes up that is not included in the agreement, the lawyer would need to alert the client and request that the client contact the lawyer if he/she needs the lawyer's assistance. Documentation of this is important.

Hon. Michael Jeanes raised a concern about the challenge that might occur because of the computer system, which indicates either that a party is represented or not. Another logistical concern he raised was with filing a notice of limited representation, then filing a notice of withdrawal. He suggested that it might not be necessary to file everything—maybe just the withdrawal, and if there is a question, then check the limited scope representation agreement, rather than attaching all of the limited scope representation agreement and exhibits to the notice of withdrawal.

Judge Davis stated that he is all in favor of allowing limited scope representation to handle certain aspects of a family law case. For a default hearing there is no need to file an appearance, nor for a consent decree. But he was concerned about getting into litigation and having an attorney represent the client for temporary orders, then not have them represent other matters handled in court on the same day. Judge Davis thinks that if there is an attorney present in court, then the attorney should represent on all issues in court that day. He stated that we need to make those judgment calls on a case-by-case basis.

Bridget Humphrey stated that most private legal aid attorneys will not take a case due to a risk that the judge is not required to honor attorney withdrawal for limited scope representation. Right now, if Community Legal Services take 10% of the people who need representation, they are lucky. Bridget feels like this is the need for limited scope representation: to allow more parties to be represented who need an attorney's assistance. Bridget said that simply stated, the only reason for not allowing an attorney to withdraw should be that the attorney has not fulfilled the limited scope representation as outlined in the agreement.

Annette Everlove stated that she turns down many cases; she added that she can not take more than two contested indigent cases a year because they are so time-consuming. She thinks that being able to take on cases, e.g. Order of Protection, that are defined as to scope would be great, and she could help on more cases if they were cleanly defined and would help the volunteer lawyers programs.

Judge Warner indicated that defining the scope of cases would be helpful for client management purposes. She thinks that often attorneys start out and do not charge huge retainers. They are told by the client that it is not a contested matter, but then it ends up being a contested matter. Judge Warner stated that it would help attorneys to be able to take cases and know what they can charge up front because many lawyers feel if they do not get their money up front, they may not get it from certain clients.

Richard Scholz stated that he sees the need for this, but there are some pitfalls and this is going to have to be on an experimental basis and a learning experience. He indicated that the client always believes an attorney's scope is broader than it is.

Pat Gerrich stated that there will be some natural constraints on attorneys, and there would have to be trainings done on how attorneys can use the option of limited scope representation. She thinks that we do not have to worry as much that every attorney is going to go out there and enter into isolated, one-small issue agreements. Pat thinks there is a natural inclination for lawyers to prefer to have full responsibility if the client can afford it; there would be a lot more clarity about who is doing what if a client and attorney enter a limited scope representation agreement.

Annette Everlove asked Pat what the experience had been in other states. Pat stated there are a number of states that have had rules for at least several years that allow limited representation. She has not seen any that specified for family law that particularly addressed these issues with family law.

Judge Armstrong wanted to go back to Judge Warner's concern about the criteria for attorney withdrawal and assured her that the judges in Maricopa handle attorney withdrawal the same way as she does in Pima County, using the same criteria. Judge Armstrong asked if withdrawal can be done by notice and pointed to two areas in Bridget's draft that might be contradicting.

TASK: Bridget will reconcile those and use a notice procedure if it bears the client's written consent but still have an order for the judge to sign. With consent there will be an order, and if no objection, it will be automatic. If there is no objection within 10 days, the court shall sign the order. If it bears no consent of the client it will have to proceed as it does now by motion. If it is done under the limited scope paragraph, it can be added that the only basis for denying the motion if it is without consent is if the scope of representation has not been concluded. If for any other reason, then we still have existing procedure.

Robert Scholtz raised a concern that there could be other reasons that an attorney might need to withdraw—i.e. client will not speak to you, the client has disappeared, the client does not respond to letters or telephone calls. Even though an attorney has not completed the limited scope representation, the attorney could still get out. Judge Armstrong pointed out that Bridget had said that the only reason an attorney could be *denied* a motion to withdraw without consent would be if the scope of representation had not been concluded, but she did not say that this is the only reason one could get out without consent.

Another concern raised was that the draft does not address that attorneys may not need to enter an appearance. There was a suggestion that the family rules might need to make it clear that people can do this, and it is authorized by rule.

Judge Davis voiced a concern that within a week of the rule being in, every representation will be limited scope representation. It will shift the decision to withdraw to the attorney. Judge Davis still thinks a motion to withdraw or shorten the response time would be better than allowing attorneys to decide to withdraw at any time.

Bridget indicated that attorneys need this rule to support that they have the authority to withdraw from limited scope representation. Judge Armstrong stated that this could be done as an experimental rule with the sunset provision—that if no objections were made, the rule would remain after a year or two.

Judge Armstrong stated that most states use a reasonableness requirement. Judge Warner likes "stages of proceedings" to determine limited scope representation; Judge Davis said the stage approach might work if it includes everything that happens during that stage, and he used the example of an attorney on a case for spousal maintenance, when an emergency petition for custody is filed; he said that everything should be included in the attorney's representation during this stage. He stated that Temporary Orders would not really be a stage, and there could be confusion whether that is a stage.

Judge Armstrong asked if we should factor reasonableness in there, or is that inherent. He suggested that this could be limited to orders of protection, jurisdiction and other as approved by the court, so that the court would have some input, or do we really want to be involved in that.
Judge Warner feels like the idea of sunsetting is a good one, but also that we need to work with the State Bar to ensure that attorneys are trained.

TASK: Judge Armstrong asked Bridget to draft a notice of limited scope of representation that would be specific in terms of what is covered, and that would be referred to in the rule, and would actually become part of the rules because these rules can include some forms and procedures.

Bridget asked Judge Davis about his concerns regarding attorneys using the limited scope rule to "weasel out" of cases and stated that it might be more helpful to specify the types of matters to which representation could be limited.

Judge Davis stated that the limited scope representation agreement needs to be filed up front and include everything that could come up. We do not want to delay the process, which would be the opposite of what the rules are intended to do—to shorten the process. He stated that there are other issues—like continuing on the case after temporary orders—that need to be clearly defined.

Bridget stated that as long as an attorney does not re-enter a notice to appear, that the attorney could continue to help in the background of the case. Many cases might settle this way.

Judge Davis stated that there are some fairness issues too, as in one party being represented and one not. Judge Armstrong envisions that if an attorney comes to court, the attorney is "in." He clarified that if the attorney is there, he does not see that the attorney would be able to limit his/her liability.

Judge Armstrong asked the Committee who would be in favor of having a rule in the family rules that would specifically define limited scope representation and would be designated as an experimental rule with the sunset provision of two years. There was a clear majority, so Judge Armstrong asked Bridget to do the next task with this.

TASK: Judge Armstrong asked that Bridget Humphrey take the next step and revise her draft of limited scope representation based on today's discussion and also include the notice. He suggested she might want to include B-1 indicating that the notice of limited scope representation is the form prescribed by the Supreme Court, so that they are using the form attached that the Committee will create.

Pat Gerrich stated that they would need to enter into a new written retainer agreement for each aspect of limited scope representation.

Annette Everlove asked, "Would the Supreme Court have the ability to amend the rule if it were set up to sunset? Or would the decision be that it either stays in or goes the way it is written?" Judge Armstrong responded that, yes they could make changes and amend it as necessary. The Rules Committee will worry about the mechanics.

Discussion ensued about the purpose of *ARCP* Rule 5.1(a) Attorney of Record and Notice of Appearance to determine where information needs to flow. If a document is filed by an attorney, then the document is filed under that attorney as attorney of record. Hon. Michael Jeanes stated that members of his staff are trained to send the information to the attorney, not the client, when they see that there is a Notice of Appearance.

Robert Scholz suggested offering a choice of either filing Notice of Appearance or Response to Petition for Dissolution. Michael said that would help because they are looking at that caption and are trained to see when there is a Notice of Appearance that they know they have to put information into the attorney field in the database. This also is picked up in the Maricopa County Local Rule 2.10 Attorney's Advice to the Court with some of the same language.

Bridget thinks we should leave it up to the county whether they want to require Notice of Appearance. It was suggested that once the attorney is in, he/she has the obligation of notifying the client and can still accept service for the client.

Judge Davis asked if the clerk dialed in on a first document and picked up the attorney fields whether the Response or the Answer could also be set up the same way. He said that anything after Petition and Response should require a separate Notice of Appearance so they can get noticed on minute entries. Judge Davis said this would be a predictable system whereby you can look at Petition and Response and then beyond that is Notice of Appearance. Michael said that in many instances that is what happens now.

Judge Davis suggested that this should be consistent with Rule 5.1, and an attorney should still file a Notice of Appearance. He stated that beyond that would be too much of an administrative nightmare. Judge Armstrong agreed and added that one of Chief Justice Jones' goals is to eliminate local rules from family law rules.

LUNCH BREAK

3. Approval of Minutes: Hon. Mark Armstrong

Judge Armstrong asked the committee members to review the minutes from the last meeting on September 26, 2003. Annette Burns stated that the noon time project mentioned in the minutes was actually a CLE at NAU, not a DRC meeting, and that it was very productive. Also, Robert Scholz indicated that he did not attend the last meeting, and Konnie indicated that the two corrections would be made before posting the final version of the minutes on the web.

Motion: Minutes Approved, seconded.

4. Workgroup #3—Section III. Simplified (Uncontested) Proceedings (Rules for uncontested and agreed cases) Report: Annette Burns, Chair

Annette Burns directed the Committee to refer to materials prepared and distributed by her work group. The two people who are doing an initial draft are Eve Parks, who is doing an initial draft for Rule 54 which is judgments which will incorporate the language from the Maricopa County rule allowing Consent decrees and what is required for Consent decrees as an additional option to other methods of finalizing judgment. Rule 55 is the default proceedings. There are not going to be a lot of substantive changes in Rule 55 itself but the workgroup is looking at all of the Arizona case law on defaults that covers what issues should be heard at the damages hearing, and to what extent the defaulted party is permitted to participate.

The feeling was that if Rule 55 should have some additional guidance for the court for family court cases where the respondent has been defaulted. Discussion ensued regarding the extent to which the respondent should participate in the "damages" part of the default hearing. One member stated that there is an argument that most, if not all, of a dissolution case is damages. There are a few cases on the issues in general, which say the defaulted party should be permitted full participation in the damages hearing. Because that does come into play in divorce cases, the workgroup felt that some guidance in applying the rule, even just restating case law, might be helpful in Rule 55.b.

TASK: Annette said her workgroup would have specific drafts for the next meeting. Annette also stated that Eve Parks can be here for the November 17 meeting regarding Rule 54.

Judge Armstrong asked to clarify the consent stipulations where Annette referred to Rule 5.h. Annette said it should not be RCP 5.h but should be Maricopa Local Rule 6.4 and 6.6.

Judge Davis asked whether the long stipulation was needed and whether jurisdictional testimony under oath is necessary. He stated that requirements for this are cumbersome for family court.

Annette Burns stated that she was going to ask Eve Parks to address this issue. Annette's understanding was that the stipulation was required and the notarization was required

Judge Armstrong said that the notarization was to avoid fraud and also to substitute for the sworn testimony. Some judges inquire into the jurisdictional basis, and some do not because it is under a verified petition, so they feel it is unnecessary.

Annette stated that she does not see a problem with there being a requirement of a separate document of reasonable length, simply because you would have to add things to the decree to cover all the jurisdictional bases that may not have been covered; furthermore, people do have to show their decree to other people sometimes to verify a name change, etc. and perhaps we do not want all that cumbersome additional language. But if the language is in the petition to start with, it would not have to be repeated in the decree. Judge Armstrong said that may be required by law. He said we would need to look at Rule 25-3. Judge Davis said the findings usually have to be in every document.

Annette stated that the question was in two parts: 1) does there have to be a separate stipulation and if so, 2) does it have to be so cumbersome and require notarization.

Judge Davis believes we should consider Joint Petitions like they used to do. Judge Armstrong's feeling is that this should be a question for the legislature. Judge Davis said he is not in favor of it, but thought the Committee should look at it. Judge Armstrong stated that Alaska is the best known and Alaska rules have eliminated the waiting period. Judge Davis said he thinks the Joint Petition was done away with due to concerns raised by the Bar. Judge Armstrong said this has come up at the Domestic Relations Committee, that maybe we looked at the Alaska statute, and consider amending ours to allow for that.

Judge Warner wants to have an affidavit under oath because of concerns—e.g. maybe a party did not realize she was pregnant, and realize that there might not be a fair and equitable division of property and debts.

Judge Armstrong stated that Rule 80.R that provides that a statement that is made under the penalty of perjury is the equivalent of a notarized statement. He believes Eve Parks will be in favor of notarization, mainly for the risk of fraud.

It was stated that Rule 80.I language can be excluded in this rule by stating it does require notarization. Judge Davis said his group had discussed two areas: one was the stipulation to change custody because of emergency reasons to change and secondly, the acceptance of service. He said perhaps we are moving towards more notarization. Judge Armstrong said these are three important areas where it is reasonable to require notarization.

TASK: Annette Burns will invite Eve Parks to come after lunch to present on Rule 54 at the November meeting.

Annette stated that for default, a defaulted party has to have requested default, been denied then participates in damages. Annette Burns stated that her work group is attempting to keep the family law rule within the procedural rules without stepping on the default rule.

Judge Warner asked about charging appearance fee when lawyers have not appeared, perhaps to approve a parenting plan. Judge Warner thinks we should bring in the default rule.

One member noted that for rule 55(f), Commissioner Foster—now Judge Foster—has a workgroup looking at Service by publication—which would eliminate the need for a court reporter. It was suggested that the Committee should allow for alternate form of keeping the record. It is unsavory to have people exchanging cash—for a transcript.

TASK: Annette will talk to Judge Foster about this issue.

5. Workgroup #1—<u>Section I. Commencement of Action/ General Rules of Pleadings</u> (Rules regarding initial filings of both sides, additional parties, representation of counsel): Bridget Humphrey, Chair

Judge Warner spoke about the Committee's thoughts about whether the Rules should utilize Petitioner/Respondent or Plaintiff/Defendant language. Debra Tanner suggested that she had drafted some language under Applicability. One member stated that the threshold issue is whether we do this even though the law (statute) 25—says Plaintiff / Defendant. Michael Jeanes said it would be a good idea to make a recommendation to change the statute. No one objected to using uniform language of Petitioner and Respondent.

TASK: Judge Armstrong said he would suggest that the AOC change the law and use Petitioner and Respondent.

Judge Warner had thought the Committee had talked about pulling Waiver of Service out completely as no one was using it, and it is confusing in family law cases and that the Committee would develop a form on acceptance. She asked if the Committee had reached consensus at the last meeting over whether to omit 4.1(c) and corollary 4.2(d). It was determined that the Committee did agree to delete these rules.

The Committee agreed to leave in Rule 4(f) and leave in "authorized agent," and also "may accept service or waiver of issuance or service thereof." This can be defined.

Judge Warner stated that she had deleted in 4.1(h) the part relating to waiver, then took out "i" which is service on a county municipal corporation under governmental subdivision, and deleted "l" which is service on a domestic corporation if not authorized officer or agent found within the state, then "o", publication as to unknown heirs of real property. Rule 4.2 is basically the corollary of 4.1 except the following would be removed: the non-residential motors act; service of corporations, partnerships, or unincorporated associations located outside Arizona but located within the United States; and service on a foreign state or political subdivision.

Judge Davis asked if it is conceivable that there would ever be a need to publish an unknown heirs notice regarding title when there is a lot of monkey business going on post decree. Discussion ensued about property possibly being awarded to husband. It was decided to leave this out, and if need be, it could be a civil law suit.

On Rule 5(a), Judge Warner stated that the last sentence needed to go back in. On Rule 5(c), Judge Warner said there was a discussion about what is done after appearance. There was discussion about the wording "service can be made upon an attorney after appearance unless service upon a party is ordered by the court." Judge Warner added "except for petitions of contempt, orders of protection, and injunctions against harassment."

She then deleted the part about "no transmission by facsimile." Committee members discussed requiring that a party also mail a copy when utilizing facsimile and a copy should go also to the attorney. Judge Armstrong stated that it does not affect the court, and normally would not be inclined to add that. Michael Jeanes stated that the Bar required hard copies when they allowed filing by fax. Judge Warner stated on the last rule that we agreed to strike "service of numerous defendants" because it was not practical and did not apply to family law cases.

Bridget stated that since Judge Nielson and Janet Metcalf were not present, that we would hold off on addressing their packets until they are present. Michael Jeanes asked to meet with Bridget regarding the Proposal—on access.

Next, discussion ensued regarding the Sealing of Records. Bridget stated that there are two types she has seen in her research on this issue: 1) sealing types of documents automatically and 2) sealing documents that contain restricted information. Bridget said many documents she had looked at included a form—akin to our cover sheet. The other procedure she saw being used is *pro se* confidential and sealed with a requirement to also file a cover sheet for the clerk.

The Committee discussed the language regarding who has access regarding Family Court cases. Michael Jeanes stated that the December 15th proposal for 123 determines that who has access is he or she who has a court order. There are some logistical matters regarding access that the Clerk wants to work with people on. Michael has heard objections to limiting access (media, credit agencies, etc.). However, in this day and age of identity theft, he agrees action must be taken to ensure, as best we can, that court records are not used for that purpose.

Regarding 25-410, Judge Armstrong recommended adding this to the family law rules and eliminating mental health, but including "pursuant to statute."

The Committee discussed 4(a) Social Security Act—agency that hands out cash assistance. Debra Tanner said there was not a need for this.

Next, discussion turned to the idea of creating a Family Law sensitive information sheet. One member suggested that the Supreme Court is handling it in 123. Judge Armstrong asked if the Committee would want to take it after we see what the Court has suggested. The Court's deadline for comment on proposal is December 5, 2003; Patience Huntwork stated that was the deadline. Judge Armstrong said this is one place we might want to refer to it by reference.

Annette Everlove suggested taking out what Family Law means because it is covered in Scope.

Michael recommended opening a case—once affidavit of service was filed—and suggested that if there was a number of days agreed upon, this could be programmed in the computer. Thirty days would help the clerk out. Michael Jeanes recommends no longer allowing access to the paper file to the public—in the future. Judge Warner recommends 45 days after filing to allow for out-of-state service and to deal with domestic violence issues. Bridget suggested that it might be a service to parties to allow access, and Judge Warner suggested that this time period, there might be a lot going on.

Bridget proposed that the parties and attorneys should still have access. Michael Jeanes stated that this gets confusing, and he wants to try to eliminate the possibility of errors. Annette Burns suggested that the attorney might have access after attorney files Notice of Appearance, but Judge Davis pointed out this would be difficult because the attorney would not have a case number.

Judge Armstrong asked the Committee to vote on the number of days a case should be closed after filing, and it was determined to that it would be—45 days by vote.

Bridget asked about looking at the suggested changes in Rule 11 based on limited scope representation. The Committee agreed to discuss this at the next meeting.

BREAK

6. Workgroup #2—<u>Section XI. General Administration</u> (Scope of DR Rules, cleaning up multiple filings, settling assignment of judicial officer & miscellaneous matters that don't fit neatly elsewhere): Judge Davis, Chair

Judge Davis stated that from proposals made last time his workgroup divided up the work and would be presenting accordingly.

<u>XI. 1. Scope of Rules and 2. Applicability of Other Rules</u>

Debra Tanner covered revisions to Rule 1. Scope of Rules and 2. Applicability of *ARCP* discussed last meeting.

Debra stated that the main question is whether this is a place in the family law rules where these rules are going to be so all-inclusive that there is no need to reference *ARCP*.

The following three issues regarding the drafting of this section were raised:

1. Whether to mention IAH family related matters,
2. Whether definitions should be here in this section, and
3. How to address the applicability of the civil rules.

Judge Davis stated that he does not think we know yet—whether these rules will be all-inclusive.

Debra Tanner stated that in her review of other states' rules, nobody really addressed relaxing the rules of evidence. She asked, "If we want to do that, do we want to do it here or in other sections?"

Judge Armstrong asked if everyone agreed that we should include the definition section in Rule 1. Scope of Rules and if Rule 2. Applicability of Other Rules might be broken down into "a. *ARCP"* and "b. Rules of Evidence."

It was suggested to change "court" to "law" to be consistent with other rules titles: Rules of Family Law Procedure.

Annette Burns suggested that the rules should include Injunctions Against Harassment where ordered by the presiding court judge or designee. Judge Davis suggested the trial judge might know, as well. And Judge Armstrong said that in his court they try to insulate the trial court judge but can delegate to trial judges.

Judge Armstrong stated that they do not use criminal contempt very often, but judges could for conduct that occurs in their presence. It was agreed to just use "Contempt."

Judge Armstrong suggested that they did not want to begin with a reference that *ARCP* applies, and we should feel free to incorporate some rules by reference. It was suggested that we do not want people using the family law rules to have to look in other rules. Annette Everlove agreed that the Committee should create a stand alone set of rules. Judge Armstrong indicated that he does not want to send people to the *ARCP* and not have them know which ones apply, but he does not have a problem with using references to specific *ARCP* rules.

It was suggested to draft the language in such a way that the *Arizona Rules of Civil Procedure* only apply when incorporated by reference in these rules or when otherwise ordered by the court. Richard Scholz agreed that this would prevent people from looking for areas where the rules conflict.

Judge Davis raised a concern about judges who state that *ARCP* rules will be used and refuse to read and follow family law rules. Judge Davis suggested taking a vote on whether to include *ARCP*.

Telephonic Appearances/ Testimony

Next, Annette Everlove initiated a discussion on rules to include covering Telephonic Testimony. She asked whether the Committee might want to make it easier for parties to appear telephonically. It was suggested that there should be different requirements for counsel, parties, and witnesses. The hierarchy would be to make it the easiest for counsel to present oral argument via telephonic testimony. The next level of difficulty to fulfill requirements for telephonic testimony would be for witnesses, and the most difficult would be for parties to testify telephonically.

Next, Annette Everlove asked for feedback about exhibits. It was suggested that one way to handle this might be require the exhibits to be submitted with the motion so that the court and the other side can determine whether there would be substantial prejudice because it might come down to a comparison of documents and you need the witness there to see them. It was suggested that on temporary or emergency hearings, parties might not be able to provide exhibits in advance pursuant with 26.1. Judge Armstrong said that he felt the substantial prejudice standard takes care of it because that allows us the discretion to deny it if it is not workable.

TASK: Annette Everlove will supplement and revise her draft per today's discussion and send her draft to Konnie to proofread.

XI. 8. General, 9. Miscellaneous: Financial Affidavits, Forms, Receivers, and 10. Children in the Courthouse

Judge Davis initiated discussion on Section XI of the outline, paragraphs 8, 9, and 10. Discussion ensued about interviews with children conducted by the court. Judge Davis asked if the Committee thought that such communication should be confidential. He asked if there should be a court reporter there and if the workgroup should outline that or leave it the way it is now. He asked if this would be within the scope of this rule.

Judge Armstrong stated that there is a rule that permits the judge to interview a child in chambers, but that is as far as the statute goes. Some judges do not do this on the record, and some do. Judge Warner stated that she does not know how children can be guaranteed confidentiality. Annette Burns stated that Judge Adam has done a presentation about how to interview children. Annette Everlove stated that she thinks there might be some issues of constitutionality. Judge Davis stated that the danger is that the judge gets extraneous information that is not on the record.

Judge Armstrong suggested that we go with Judge Warner's recommendation to require that children being interviewed should be on the record. Judge Davis asked if parties stipulate, maybe we could allow it to be off the record. Discussion continued, and the Committee agreed with Judge Armstrong that there is no real reason not to preserve the record. Judge Armstrong said he feels this is a procedural matter. He stated that on the parties' or court's own motion to interview child, the court will interview the child in chambers and make a record accessible unless the court determines otherwise based on the child's best interest. Judge Warner would rather have it presumptively closed unless there is good cause.

Robert Scholz asked if the Supreme Court could open the record if parents stipulate they want it to remain confidential. Judge Armstrong stated that for his own protection, he would recommend it is on the record and, presumptively, confidential. Annette Burns said it should remain confidential (sealed) and should be transcribed only on motion to show good cause. She continued saying that the court should open the record only if it finds that it would be in the child's best interest. Bridget commented that the court has discretion as to whether or not to conduct an interview with a child, and whether or not the interview will be confidential may be a factor in whether the judge interviews the child.

It was asked whether or not GAL's and other professionals conducting interviews should be included in considering confidentiality of interviews with children. Judge Armstrong said he does not necessarily appoint GAL's for that purpose, but they would normally do that in the course of their duties. Judge Armstrong stated that he would rather stay away from other professionals.

XI. 11. Public Access to Proceedings

Judge Davis stated the court may exclude the public from a custody hearing. The court may exclude any member of the public from any family court hearing or conference conducted prior to a trial or post-judgment evidentiary hearing.

Discussion ensued regarding whether or not the court may exclude the public from any family court hearing or conference conducted prior to a trial or post-judgment evidentiary hearing. It was suggested to take out the word "hearing." Judge Warner suggested looking at Juvenile Rule 19(b)(1) which talks about protecting the interests of the juvenile. Judge Davis stated that he does not want to require a motion in order for parties or attorneys to meet in chambers because he sees it as an effective means to get parties to settle, and he thinks that is important to do. Judge Armstrong proposed to Judge Davis that they eliminate the words "post judgment" so that it is trial or evidentiary hearing. Judge Davis said trials and evidentiary hearings are different. Judge Warner stated that frequently counsel will want to talk to her in chambers, because they want to tell her the real story that they cannot say in front of their clients, or they will want to see if she has an idea on how to compromise. It was suggested they could expand the end of the first sentence, to cover the scenario we are looking for. Judge Davis stated that if he gets the people in chambers, 98% of the time the case will be settled. Judge Armstrong thought that if the word "post judgment" could be eliminated for those people who do evidentiary hearings, he would be willing to let it go for further comment, but include it in the draft.

It was agreed to adopt 80(h) verbatim.

Judge Davis stated that there should be a notary needed for acceptance of service, stipulations for agreement, and consent decrees. After that, the language is identical to ADI. He also stated that we need to add to Rule 4(f).

Judge Davis reminded the Committee that we had decided to delete jurisdiction venue last time, and to keep that the local rules the way they are. In regard to forms, the only change was that any form could be made mandatory for submission, but left up to each county.

7. Next Meeting: Konnie Young, Committee Staff

Judge Armstrong announced that the next DR Rules meeting will be held on November 17, 2003 at the Arizona Courts Building, 1501 W. Washington, Room 119. Judge Armstrong asked if all of the workgroups still had work to report on at the next meeting. He asked if there were any changes in workgroup composition to report. He stated that we had a full agenda next time.

8. Call to the Public: Hon. Mark Armstrong

There were no public members present.

9. Adjournment: Hon. Mark Armstrong

The meeting adjourned at 3:00 pm.